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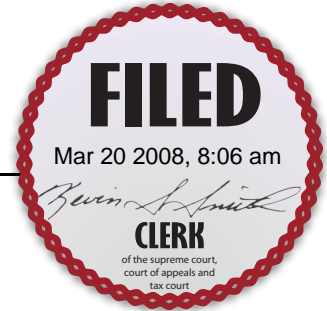
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP OF )  
K. B. and T. B. )

TANA BURWELL, )

Appellant-Respondent, )

vs. )

No. 02A03-0708-JV-415

ALLEN COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner. )

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable William L. Briggs, Judge  
Cause Nos. 02D07-0610-JT-196 & 02D07-0610-JT-197

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**March 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Tana Burwell (“Mother”) appeals the trial court’s termination of her parental rights to her children, K.B. and T.B. Mother raises one issue, which we revise and restate as whether the trial court’s termination of Mother’s parental rights is clearly erroneous. We affirm.

The relevant facts follow. In October of 2005, the Allen County Department of Child Services (“ADCS”) removed six-month-old K.B. and two-year-old T.B. from Mother’s custody. The removal of the children was the culmination of an investigation that began in August of 2005 because of the family’s lack of stable housing. The investigation disclosed that Mother had left both children with an inappropriate babysitter for several days; the babysitter did not have supplies for the children, including food and diapers; T.B. had a black eye; and the family was homeless. Mother admitted that beginning in August 2005 until October 2005, she and the children had been living in hotels.

ADCS filed a petition alleging the children to be in need of service (“CHINS”), and Mother admitted to the above-mentioned facts as well as to her September 2005 positive test for cocaine and marijuana. Mother further admitted that the babysitter to whom she had entrusted her children’s care had a history of drug abuse.

The trial court adjudicated the children CHINS on January 24, 2006, and entered a dispositional decree that same day. The trial court placed Mother under a Parent Participation Plan (“PPP”) that, among other things, required her to: (1) refrain from all criminal activity; (2) maintain clean, safe, and appropriate housing at all times; (3) notify ADCS within forty-eight hours of all changes in household composition, housing and

employment; (4) cooperate with all caseworkers by attending all case conferences as directed, maintaining contact and accepting announced and unannounced home visits; (5) immediately provide caseworkers with accurate information regarding paternity, finances, insurance and family history; and (6) provide her children with clean, appropriate clothing at all times. Appellant's App. at 254.

The PPP also required Mother to successfully complete and benefit from the following programs, services and/or other requirements in a timely manner: (1) obtain suitable employment and maintain said employment; (2) submit to random urinalysis testing as required by Lutheran Social Services and/or ADCS caseworkers; (3) refrain from the use of alcohol, illegal drugs, and other substances; (4) obtain a drug and alcohol assessment by February 25, 2006, and follow all recommendations therein; (5) obtain a psychological assessment and follow the recommendations therein; (6) enroll in parenting classes for infants and toddlers by February 25, 2006, attend all sessions, follow all recommendations, and successfully complete the classes; (7) attend and appropriately participate in all visits with her children as directed; (8) commence proceedings to establish paternity by meeting and cooperating with IV-D prosecutors and staff; and (9) paying support in the amount of \$20.00 per week from April 25, 2006 until reunification. Appellant's App. at 254-55.

Three months after the CHINS finding, Mother was arrested (April 2006) and incarcerated for a short time on a Class D felony theft charge. Upon her admission of guilt, she was placed on probation. However, she violated the terms of her probation by testing positive for marijuana and cocaine in September and October of 2006, failing to

report for supervision as instructed, and failing to attend substance abuse counseling. The criminal court placed Mother on home detention and required her to wear an ankle bracelet. Mother cut off the ankle bracelet, resulting in a felony escape charge. From December 16, 2006, until at least October 2007, Mother was an inmate at the Allen County Jail.

Mother did not (1) begin drug testing with Lutheran Social Services; (2) complete her drug assessment with Lutheran Social Services; (3) complete her psychological evaluation; (4) participate in parenting classes; (5) pay child support; (6) participate in home-based services; (7) establish stable housing; (8) establish paternity for either child; or (9) stop using illegal drugs. In addition, Mother's visitation with her children was placed on hold on six separate occasions because of her failure to show up for visitations, and she showed up for only half the scheduled visits with them.

On October 20, 2006, ADCS filed separate petitions for involuntary termination of Mother's parental rights in K.B. and T.B.<sup>1</sup> After hearings on March 13, 2007, and March 15, 2007, the trial court terminated Mother's parental rights in both children. In support of its termination orders, the trial court made the following findings:

- (4) It is established by clear and convincing evidence that the allegations of the Petition[s] are true in that there is a reasonable probability that the conditions that resulted in the child[ren]'s removal and the reasons for the placement outside the parent's home will not be remedied, and/or that continuation of the parent/child relationship poses a threat to the well-being of the child[ren].

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<sup>1</sup> The terminations have been consolidated on appeal.

The children were removed from the mother's care in October of 2005, and have not been returned to her care since removed.

On the date of the Termination Hearing, mother was incarcerated as a result of a theft conviction and subsequent violation for using marijuana.

From December 2005, the mother has resided at seven different residences with friends or a family member.

The mother has not provided stable housing for herself or her child[ren]. She has not acquired stable employment.

The mother failed all of her drug tests taken nor has she completed the services required under her [PPP].

The mother cannot recall when she last visited with her child[ren]. She did not come to ten of the twenty scheduled visits with her child[ren]. Home-based services were scheduled for the mother and she missed nine of the fourteen scheduled.

\* \* \* \* \*

- (5) Termination of parental rights is in the best interests of the child[ren], in that mother . . . [has] shown over the course of the related CHINS cause, and in the face of a treatment plan or plans, and numerous specific services made available and/or provided, that [Mother] continue[s] to be unable, refuse[s], or neglect[s] to provide for the basic necessities of a suitable home for raising of said child[ren].

Appellant's App. at 16-20.

The issue is whether the trial court's order terminating Mother's parental rights to K.B. and T.B. is clearly erroneous. The traditional right of a parent to establish a home and raise her children is protected by the Fourteenth Amendment of the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated

to the children's interests in determining the proper disposition of a petition to terminate parental rights. *Id.* Parental rights may be terminated when a parent is unable or unwilling to meet her parental responsibilities. *Id.* The purpose of terminating parental rights is not to punish a parent, but to protect the children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161, 122 S.Ct. 1197, 152 L.Ed.2d 136 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Bester*, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* Here, the trial court made findings in granting the termination of Mother's parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. *Id.* First, we determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* The trial court's judgment will be set aside only if it is clearly erroneous. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Id.* (quoting *In re R.J.*, 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

Ind. Code § 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship." Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
  - (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
  - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

The State must establish these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234-35 (Ind. 1992); *Doe v. Daviess County Div. of Children & Family Services*, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), *trans. denied*. The termination court is required to look at the totality of the evidence to assess parental fitness and to determine the children's best interest. *In re D.L.*, 814 N.E.2d 1022, 1030 (Ind. Ct. App. 2004), *trans. denied*.

Mother contends that ADCS failed to present sufficient evidence to support the trial court's conclusion that the conditions that resulted in the removal of the children would not be remedied.<sup>2</sup> Specifically, Mother contends that her three parental "shortcomings"—incarceration, lack of stable housing, and use of illegal drugs—were not habitual in nature and thus did not threaten her children's well-being. Appellant's Brief at 10.

To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his children at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct.

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<sup>2</sup> Mother also argues that the trial court erred by finding that the continuation of the parent-child relationship posed a threat to the well-being of the children. Ind. Code § 31-35-2-4(b)(2)(B) required the ADCS to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court specifically found a reasonable probability that the conditions that resulted in the children's removal and the reasons for the placement outside the parent's home will not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children is clearly erroneous. See, e.g., Bester, 839 N.E.2d at 148 n.5; In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.



App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

The record in this case reflects that after ADCS removed her children, Mother continued to act in a pattern of habitual negative conduct. Shortly after the trial court found her children to be in need of services, Mother committed theft. Early in her probation for that offense, she tested positive for marijuana and cocaine use. She then agreed to attend a substance abuse evaluation and successfully complete treatment pursuant to the evaluation. Instead, she again violated probation by using marijuana and cocaine and by failing to engage in substance abuse counseling. Mother was then placed on home detention that required her to wear an ankle bracelet; however, she cut off the bracelet in an attempt to escape home detention. In looking at the totality of the evidence, the termination court did not err in determining that Mother's illegal activities were more than a phase that Mother was going through.

Furthermore, the trial court did not err in considering Mother's drug use as evidence warranting termination of parental rights. Ironically, Mother argues that her drug use was limited to a short time period and that she would have benefited from drug rehabilitation. ADCS at one time believed that Mother's drug use could be overcome, and it accordingly recommended that the CHINS court order drug testing and a complete drug assessment. Mother, however, did not participate in the drug assessment. Mother squandered similar opportunities while on probation for the criminal case. The trial court did not err in concluding that use of illegal drugs would continue to occur and that Mother would not avail herself of opportunities to curtail such use.

In addition, there was no indication from the record that Mother's inability to provide stable housing would soon change. Mother and the children were homeless at the time they were removed from her care, and Mother took no steps toward obtaining stable housing during the nearly 1½ years between the children's removal and the trial court's termination order.<sup>3</sup>

Finally, and perhaps most telling, Mother failed either to attempt to improve her parenting skills or to follow through on attempts to do so. Indeed, Mother put no priority on complying with the PPP's order that she visit her children.

The trial court did not terminate Mother's parental rights on the basis of any particular shortcoming; it terminated her rights on the totality of the evidence. Given the totality of the evidence, the trial court's termination of Mother's parental rights was not clearly erroneous.

Affirmed.

BARNES, J. and VAIDIK, J. concur

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<sup>3</sup> We note that although Mother was an inmate in the Allen County Jail for a short period in April 2006, she had three months before her arrest to begin compliance with the court-ordered PPP. Following her April arrest and release, she had at least until December 2006 to begin compliance. Thus, Mother had approximately eleven months to comply with the PPP; however, she did not do so.